

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(Mountain View, Milpitas, Sacramento, CA)

NETVERSANT- NORTHERN CALIFORNIA
INC.

Employer-Petitioner

and

Case 32-UC-413

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 332,

Union

and

COMMUNICATION WORKERS OF AMERICA,
LOCAL 9423,

Intervenor

DECISION AND ORDER

The Employer, NetVersant Northern California, Inc., is engaged in the business of installing and maintaining low voltage wiring, telecommunications, and security systems. It filed a petition with the National Labor Relations Board, herein called the Board, under Section 9(c) of the National Labor Relations Act, seeking clarification regarding the inclusion of certain of its employees in an existing bargaining unit represented by the International Brotherhood of Electrical Workers, Local 332, herein called IBEW Local 332.¹ The petition was occasioned by a September 29, 2005, merger, pursuant to which another company, NetVersant Silicon Valley, Inc., was merged into the Employer. At the time of the merger, NetVersant Silicon Valley had a

¹ Under separate cover, I approved the withdrawal request filed by the Employer in Case 32-RM-798.

collective-bargaining relationship with the Communications Workers of America, Local 9423, herein called CWA Local 9423.

On February 24, 2006, a hearing officer of the Board held a hearing in this matter. At the conclusion of the hearing, all parties entered into a stipulation pursuant to which it was agreed that the bargaining unit represented by IBEW Local 332 should be clarified to include certain of the former NetVersant Silicon Valley employees previously represented by CWA 9423, with the parties further agreeing that the remainder of the former NetVersant Silicon Valley unit employees would continue to be represented by CWA Local 9423. Having considered the parties' stipulation in light of the hearing record, I conclude that the bargaining unit represented by IBEW Local 332 should be clarified to conform to the parties' stipulation.^{2[2]}

Facts

The Employer currently has a collective-bargaining agreement with IBEW Local 332, the term of which is from December 1, 2004, through November 30, 2006. This agreement covers the Employer's senior communications and systems technicians, communications and systems technicians, and apprentices who perform communications/electronic work within the jurisdiction of IBEW Local 332 (San Jose), as well as other IBEW locals, including Local 340 (Sacramento), and Local 617 (San Mateo). NetVersant Silicon Valley was signatory to a collective-bargaining agreement with CWA Local 9423, which has a term running from August 23, 2003, through August 23, 2006. That agreement covers Silicon Valley's technicians I, II, and III and security technicians I, II and III, including leads and working foremen, who perform work on low voltage wire and telecommunications systems.³

² All parties waived their rights to file a brief at the hearing.

³ The parties stipulated that these contracts are 8(f) agreements and that neither the historical CWA or IBEW unit was the subject of a Board election or certification.

The Employer's current configuration is the culmination of an evolving history of mergers and acquisitions. Thus, the record reflects that NetVersant Silicon Valley was itself preceded by a company called Apex, based in Mountain View, California, which, in 1984, was involved in the business of installing and servicing security systems for public enterprises. In 2000, NetVersant Solutions purchased Apex, at which time it became NetVersant Silicon Valley. The latter company installed structured cabling systems (also known as SCS) and also installed and serviced electronic security systems (ESS), which helped customers secure their buildings. In performing those services, NetVersant Silicon Valley employed "dedicated site" technicians, who are assigned to work on-site for a particular customer on a long-term basis, and "non-dedicated site" technicians, who provide services to various customers of Silicon Valley on a shorter term, project basis. NetVersant Silicon Valley had three dedicated site customers, namely, Genentech, Hewlett Packard, and Levi Strauss. Employees working at "dedicated sites" report directly to the on-site customers, who, unlike the project customers, have direct authority over the dedicated site employees who report to them. The "dedicated site" job assignments are permanent.

The Employer was established in about May 2000, when NetVersant Solutions acquired T & R Communications and renamed it as NetVersant Northern California. It had offices in Milpitas and Sacramento, California, and, like NetVersant Silicon Valley, was involved in the installation of SCS systems, as well as telecommunications systems and other services. As with much of NetVersant Silicon Valley's work, the Employer's work was performed pursuant to project-based contracts, and the two companies shared the same customer base throughout Northern California.

On September 29, 2005, the Employer merged with NetVersant Northern California. The merger decision was prompted by the fact that the two companies shared the same customer pool, which, prior to the merger, had led to certain inefficiencies in customer service.

The merger resulted in a number of operational and administrative changes. They include the administrative consolidation of the previously separate operations of the Employer and NetVersant Silicon Valley. Now, the Employer's entire operation is overseen by General Manager Pat McMurray. Directly under McMurray are Operations Managers Robert Carter, Tim Bowdish, Victor Knigge; Sales Manager Andy Gee; and a currently vacant Controller position.⁴ The Employer is also actively searching for a single facility to combine its Milpitas and Mountain View operations, which will be located either in Milpitas or Fremont, California.

At the hearing, the parties stipulated that all three Employer sites--Milpitas, Mountain View, and Sacramento--share centralized control of labor relations policies and working conditions. Bowdish and Carter, the two operations managers based in the Milpitas and Mountain View offices, work together closely to coordinate work assignments of the combined labor pool, as well as in maintaining support vehicles, tools, and other resources. Hiring and disciplinary decisions are made by the operations manager, the project manager, and the human resources department based in the Sacramento office. All employees share the same payroll cycle, and the payroll department itself is centrally located in the Milpitas office. As such, all employees are required to have regular communication with the Milpitas office in order to record their work time. As was the case before the merger, all technicians, whether working at a dedicated site or non-dedicated site, work in the field and do not report to any of the Employer's offices.

⁴ The Employer confirmed that it will be hiring a person to fill this position in the near future.

Since the merger, the Employer has regularly intermingled CWA and IBEW Unit employees at all of its work sites, with the exception of the dedicated work site employees who are permanently assigned to work for Genentech, Hewlett Packard, or Levi Strauss. In fact, the Employer currently utilizes a blended workforce at most of its non-dedicated projects because both groups of employees often perform the same duties, and they often have the same skills, knowledge, training, and use the same tools. Thus, the Employer uses the non-dedicated site employees as a single labor pool available to perform all project-based work. The Employer's objective in work assignments, as the record reflects, is to assign work in accordance with each employee's individual strengths, rather than factors such as union affiliation or job classifications. For example, at the "Agere" project, which was primarily a structured cabling job ("SCS"), the Employer used two "ESS" classified technicians on various days in January 2006 to perform the work. In this way, the Employer focuses on the needs of the customers and the requirements of the task in determining which employees will be assigned to a particular project. As a result of this change in work assignments, IBEW Unit employees are regularly assigned to work alongside CWA Unit employees on all project based work, including both on-going and new projects.

Unlike "non-dedicated site" technicians, the terms and conditions of employment of "dedicated site" technicians have not changed significantly since the merger. Thus, employees working at "dedicated sites" continue to report directly to the same three customers, namely, Genentech, Hewlett Packard, or Levi Strauss, and those customers continue to have direct authority over the "dedicated site" employees who report to them. Moreover, the job

assignments to “dedicated site” work are permanent, and there is no interchange of IBEW and CWA Unit employees regarding such work.⁵

Stipulation by the Parties Regarding the Unit Clarification

At the conclusion of the instant hearing, all the parties stipulated that the IBEW Unit should be clarified to include those former employees of NetVersant Silicon Valley who perform non-dedicated site work, which would involve the addition of about 21 employees into the already existing 74-employee IBEW Unit. The parties further agreed that the remaining NetVersant Silicon Valley unit employees, consisting of the “dedicated site” employees currently working for Genentech, Hewlett Packard, and Levi Strauss at their various work sites (a group of approximately 14 employees the Units) will remain in the CWA-represented Unit.

ANALYSIS

In determining whether accretion is appropriate, the Board examines such factors as central control over daily operations and labor relations, including the extent of local autonomy; similarity of employee skills, functions, and working conditions; degree of employee interchange; common supervision; distance between locations; and bargaining history. See *Mercy Health Services*, 311 NLRB 367 (1993). The Board has repeatedly identified the degree of interchange and separate supervision as particularly important factors in determining whether an accretion is warranted. See *Towne Ford Sales*, 270 NLRB 311, 311-312 (1984), *aff'd sub nom.*, *Machinists Local 1414 v. NLRB*, 759 F.2d 1477 (9th Cir. 1985); *Passavant Retirement and Health Center, Inc.*, 313 NLRB 1216, 1218 (1994). Moreover, the Board looks at the number of employees involved in the proposed accretion, and generally finds that when a group sought to

⁵ The record contains an example of a non-dedicated site project which took place at a Hewlett Packard work site on various dates in January 2006. However, this project-based work was different from the work being performed by the “dedicated site” employees in that it was more limited in scope and duration. Another distinction is that project based work was directed by the Employer, whereas the “dedicated site” employees report directly to Hewlett Packard management and staff.

be accreted numerically overshadows an existing group, the Board will not accrete the larger number of employees without giving them a chance to express their representational desires.

Geo. V. Hamilton, Inc., 289 NLRB 1335, 1338-1339 (1988).

In applying those factors here, I find that it is appropriate to accrete into the IBEW Local 332-represented unit the non-dedicated site technicians formerly employed by NetVersant Silicon Valley, who currently are represented by CWA Local 9423. Thus, with regard to the first factor, the parties stipulated and the record shows that all three Employer offices share centralized control of labor relations policies and working conditions. In that regard, the two Operations Managers working out of the Employer's Mountain View and Milpitas facilities, namely, Bowdish and Carter, coordinate their labor pool assignments and are also responsible for the maintenance and support of vehicles, tools and resources applicable to employees at the sites. Moreover, all hiring and disciplinary decisions are made with the consultation of the human resources department in Sacramento.

In addition, the record amply demonstrates that the non-dedicated site technicians formerly employed by NetVersant Silicon Valley share a distinct community of interest with the IBEW Unit employees. Thus, they, unlike the dedicated site technicians formerly employed by NetVersant Silicon Valley, work on non-dedicated projects, as is the case with the other employees already in the IBEW Local 332-represented unit. They and the other employees in the IBEW Local 332-represented unit have similar skills, training and education, and they share similar working conditions insofar as they use the same vehicles, tools, and other resources. Moreover, in the post-merger period, the changes in the Employer's operations have resulted in a high degree of interchange between the non-dedicated site technicians formerly employed by NetVersant Silicon Valley and the already existing employees in the IBEW Local 332-represented Unit.

In sum, given the high degree of integration, the similarity in skills, functions and working conditions, and the degree of employee interchange, it is appropriate to include the non-dedicated site technicians formerly employed by NetVersant Silicon Valley in the IBEW Local 332-represented Unit.⁶ Accordingly, I shall clarify the IBEW Local 332-represented unit to include all of the Employer's non-dedicated site technicians, including those formerly performing such work for NetVersant Silicon Valley, resulting in the accretion of approximately 21 employees into that unit.

CONCLUSIONS AND FINDINGS

1. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is a California corporation with offices and places of business in Sacramento, Milpitas, and Mountain View, California, where it is engaged in the business of installation and maintenance of low voltage wiring, telecommunications, and security systems. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated and I find that IBEW Local 332 and CWA Local 9423 each is a labor organization within the meaning of Section 2(5) of the Act.

4. The Employer seeks to clarify the existing IBEW Local 332-represented bargaining unit to include certain employees in its existing CWA Local 9423-represented bargaining unit.

⁶ I also note that the approximately 21 employees represented by CWA Local 9423 who the Employer currently seeks to accrete to the existing IBEW Local 332 unit, a group totaling approximately 74 employees, is a small fraction of the larger IBEW group.

5. I find that the Employer's requested clarification is appropriate and the IBEW Local 332-represented bargaining unit shall be so clarified.

ORDER

The collective-bargaining unit covered by the Employer's December 1, 2003, through November 30, 2006, collective-bargaining agreement with IBEW Local 332 is hereby clarified to include all employees in the collective-bargaining unit covered by the Employer's August 23, 2003, through August 23, 2006, collective-bargaining agreement with CWA Local 9423, including leads, and working foremen, but excluding those "dedicated site" employees working at the Genentech, Hewlett Packard, and Levi Strauss job sites.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on June 9, 2006. The request may **not** be filed by facsimile.

DATED AT Oakland, California, this 26th day of May, 2006.

Alan B. Reichard
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Fraction of the larger IBEW group,